No. 01-896

Supreme Court, U.S.
FILED
MAY 3 2002

IN THE

Supreme Court of the United States

FORD MOTOR COMPANY and
CITIBANK (SOUTH DAKOTA), N.A.,

Petitioners,

—v.—

JOHN B. MCCAULEY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF *AMICUS CURIAE* OF PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA IN SUPPORT OF PETITIONERS

Of Counsel:

MARJORIE E. POWELL
PHARMACEUTICAL RESEARCH AND
MANUFACTURERS OF AMERICA
1100 Fifteenth Street, NW
Washington, DC 20005

DAVID KLINGSBERG
Counsel of Record
THOMAS A. SMART
MARK S. POPOFSKY
RICHARD A. DE SEVO
KAYE SCHOLER LLP
425 Park Avenue
New York, New York 10022
(212) 836-8000

Attorneys for Amicus Curiae Pharmaceutical Research and Manufacturers of America

Dated: May 6, 2002

26 pp

TABLE OF CONTENTS

PAGE

INTEREST OF AMICUS CURIAE 2

SUMMARY OF ARGUMENT 5

ARGUMENT

I. THE NINTH CIRCUIT CORRECTLY RECOGNIZED THAT THE PLAIN MEANING OF "MATTER IN CONTROVERSY" REQUIRES CONSIDERING THE VIEWPOINT OF EITHER PARTY INCLUDING THE DEFENDANT'S COSTS OF COMPLYING WITH INJUNCTIVE RELIEF 8

II. THE NINTH CIRCUIT ERRED IN CREATING A CLASS ACTION EXCEPTION TO THE "EITHER VIEWPOINT" RULE 12

A. The Ninth Circuit's Exception to the "Either Viewpoint" Rule is Contrary to and Not Mandated by *Snyder* and Violates Federal Rule of Civil Procedure 82 13

B. Application of the "Either Viewpoint" Rule Comports with Congress's Intent and Does Not Threaten to Federalize Every Action Alleging Violations of State Law..... 17

CONCLUSION..... 21

TABLE OF AUTHORITIES

Cases: PAGE

Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265 (1995) 10

Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976) 7, 21

Committee of GI Rights v. Callaway, 518 F.2d 466 (D.C. Cir. 1975) 11

Dawson v. Ciba-Geigy Corp., 145 F. Supp.2d 565 (D. N.J. 2001) 3

Eagle Star Ins. Co. v. Maltes, 313 F.2d 778 (5th Cir. 1963) 18

Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469 (1992) 12

Glover v. Johns-Manville Corp., 662 F.2d 225 (4th Cir. 1981) 18

Griffith v. Sealtite Corp., 903 F.2d 495 (7th Cir. 1990) 18

Hunt v. Washington State Apple Adver. Comm'n, 432 U.S. 333 (1977) 5, 9

In re Brand Name Prescription Drugs Antitrust Litig., 123 F.3d 599 (7th Cir. 1997) 3, 6, 13-15

In re Microsoft Corp. Antitrust Litig., 127 F. Supp.2d 702 (D. Md. 2001) 19

Kanter v. Warner-Lambert Co., 265 F.3d 853 (9th Cir. 2001) 3, 4, 19

PAGE

Kheel v. Port of New York Auth., 457 F.2d 46 (2d Cir. 1972) 11

Loizon v. SMH Societe Suisse de Micro-electronics, 950 F. Supp. 250 (N.D. Ill. 1996) 19

McCarty v. Amoco Pipeline Co., 595 F.2d 389 (7th Cir. 1979) 5, 10

Ratzlaf v. United States, 510 U.S. 135 (1994) ... 12

Shields v. Thomas, 58 U.S. 3 (1854) 19

Snyder v. Harris, 394 U.S. 332 (1969) 5, 6, 12-17, 19, 20

United States v. Nippon Paper Indus. Co., 109 F.3d 1 (1st Cir. 1997) 12

Vodusek v. Bayliner Marine Corp., 71 F.3d 148 (4th Cir. 1995) 14

Williams v. Conseco, Inc., 57 F. Supp. 2d 1311 (S.D. Ala. 1999) 14

Zahn v. International Paper Co., 414 U.S. 291 (1973) 14

Statutes and Regulations:

28 U.S.C. § 1332(a) 5, 8, 9

Rule 18, Federal Rules of Civil Procedure 17

Rule 20, Federal Rules of Civil Procedure 17

Rule 23, Federal Rules of Civil Procedure ..... *passim*

Rule 82, Federal Rules of Civil Procedure .. 6, 13, 16-17

PAGE

Legislative History:

H.R. Rep. No. 100-899 (1988), *reprinted in* 1988 U.S.C.C.A.N. 5982 20

S. Rep. No. 58-1830 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3099 20

S. Rep. No. 104-366 (1996), *reprinted in* 1996 U.S.C.C.A.N. 4202 ..... 7, 20

Treatises and Articles:

Armistead M. Dobie, *Jurisdictional Amount in the United States District Court*, 38 Harv. L. Rev. 733 (1925)..... 11

Note, *Federal Jurisdictional Amount: Determination of the Matter in Controversy*, 73 Harv. L. Rev. 1369 (1960) 10, 11

Richard H. Fallon, Jr., *et al.*, Hart and Wechsler's The Federal Courts and the Federal System (4th ed. 1996) 9, 11

14B Charles B. Wright, *et al.*, Federal Practice and Procedure (3d ed. 1998) 5, 9

7 Charles B. Wright, *et al.*, Federal Practice and Procedure (3d ed. 2001) 14, 15

IN THE

Supreme Court of the United States

No. 01-896

FORD MOTOR COMPANY and
CITIBANK (SOUTH DAKOTA), N.A.,

Petitioners,

—v.—

JOHN B. MCCAULEY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF *AMICUS CURIAE* OF PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA IN SUPPORT OF PETITIONERS

The Pharmaceutical Research and Manufacturers of America (PhRMA) submits this brief as *amicus curiae* in support of petitioners. All parties have consented to the filing of this *amicus curiae* brief pursuant to letters filed with the Clerk of the Court.[1]

[1] This brief was authored by the *amicus* and counsel listed on the cover, and was not authored in whole or in part by counsel for a party. No one other than the *amicus*, its members, or its counsel made any monetary contributions to the preparation or submission of this brief.

INTEREST OF AMICUS CURIAE

The Pharmaceutical Research and Manufacturers of America (PhRMA) is a voluntary, nonprofit association that represents the country's leading research-based pharmaceutical and biotechnology companies.[2] PhRMA's members invent and market medicines that enable patients to lead longer, healthier and more productive lives.

The Ninth Circuit held that the defendant's costs of complying with injunctive relief in a class action cannot determine the amount in controversy. PhRMA's members are concerned that this ruling improperly contracts the diversity jurisdiction of the federal courts. The Ninth Circuit acknowledged that the costs of complying with injunctive relief can count toward the jurisdictional minimum in "single plaintiff" and "multiple plaintiff cases." Pet. App. 8a-9a, 12a (internal quotations omitted). The Ninth Circuit nonetheless held that applying the same rule in class actions "is fundamentally violative of the principle underlying the jurisdictional amount requirement—to keep small diversity suits out of federal court." Pet. App. 12a. The Ninth Circuit adhered to this reasoning even though, according to petitioners, the costs of providing injunctive relief to one or all class members would exceed the $75,000 jurisdictional threshold. Pet. App. 12a. In other words, under the Ninth Circuit's rule, each plaintiff's claim becomes jurisdictionally insufficient when joined in a class action even though each would be jurisdictionally sufficient if asserted in an individual suit or if joined pursuant to other federal rules.

[2] PhRMA's brief is submitted on behalf of PhRMA members Abbott Laboratories, Allergan, Inc., Amersham Health, Amgen Inc., AstraZeneca LP, Aventis Pharma AG (and subsidiaries), Bayer Corporation Pharmaceutical Division, Berlex Laboratories, Inc., Bio-Technology General Corp., Biogen, Inc., Boehringer Ingelheim Pharmaceuticals, Inc., Bristol-Myers Squibb Company (and subsidiaries), Elan Pharmaceuticals, Inc., Eli Lilly and Company, Fujisawa Healthcare, Inc., Genzyme Corporation, Gilead Sciences, Inc., GlaxoSmithKline, Hoffmann-La Roche Inc., Johnson & Johnson (and subsidiaries), Merck & Co., Inc. (and subsidiaries), Novartis Pharmaceuticals Corporation, Organon Inc., Otsuka America Pharmaceutical, Inc., Pfizer Inc., Pharmacia Corporation, The Procter & Gamble Company, Purdue Pharma L.P. (and subsidiaries), Sanofi-Synthelabo Inc., Schering-Plough Corporation, SCHWARTZ PHARMA, INC., Serono, Inc., Solvay Pharmaceuticals, Inc., Wyeth (and subsidiaries), and 3M Pharmaceuticals.

The Ninth Circuit's holding, which is erroneous for the reasons shown below, particularly concerns PhRMA because its members are frequently subject to state law consumer suits seeking redress for harms allegedly caused by those members' products, marketing efforts, or other conduct. Such suits can take the form of class actions seeking extensive injunctive relief. For example, plaintiffs have invoked state law to compel PhRMA members to change the labels of FDA-approved products, *see, e.g.*, *Kanter* v. *Warner-Lambert Co.*, 265 F.3d 853 (9th Cir. 2001), to engage in "corrective" advertising, *see, e.g.*, *Risti* v. *Novartis Consumer Health, Inc.*, No. MID-L-4053-01 (N.J. Super. Ct. Law Div., Compl. filed Apr. 30, 2001), to mandate provision of court-supervised medical-monitoring services, *see, e.g.*, *Dawalt* v. *Purdue Pharma, L.P.*, No. 01-c1-01463 (Ky. Cir. Ct., Compl. filed Nov. 26, 2001), to cease and desist from particular marketing practices, *see, e.g.*, *Dawson* v. *Ciba-Geigy Corp.*, 145 F. Supp.2d 565 (D. N.J. 2001), and to terminate alleged agreements in unreasonable restraint of trade and to alter business practices, *see, e.g.*, *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599 (7th Cir. 1997).

These types of suits can hardly be characterized as "small diversity suits." Pet. App. 12a. To the contrary, the injunctions these suits seek can have enormous consequences. Such injunctions may require companies to reorder their conduct on a national or even international level. Thus, even though based on state law, these suits can have profound implications for the nation's welfare and public policy. Compliance with the injunctions demanded, moreover, often will cost PhRMA's members well in excess of $75,000 whether relief is awarded to one plaintiff or many. For instance, plaintiffs in one action sought as part of court-supervised medical monitoring relief to compel a PhRMA member *inter alia* to "fund[ ] * * * studies of the long-term effects" of a particular drug as well as to "provid[e] for the creation, maintenance, and operation of a registry in which relevant medical information" relating to that drug is made available.[3] The costs of funding studies and creating a registry cannot be lowered by reducing the number of plaintiffs. PhRMA's members, however, have had their controversies excluded from the federal courts by the Ninth Circuit's rule that compliance costs cannot count towards the jurisdictional minimum in class actions. *See, e.g.*, *Kanter* v. *Warner-Lambert Co.*, 265 F.3d 853, 861 (9th Cir. 2001). PhRMA and its members accordingly have a keen interest in this Court's clarification of the appropriate rules for determining the amount in controversy when plaintiffs join in a putative class and seek injunctive relief.

[3] *Dawalt* v. *Purdue Pharma, L.P.*, No. 01-c1-01463 (Ky. Cir. Ct., Compl. filed Nov. 26, 2001) (Complaint ¶ 139).

SUMMARY OF ARGUMENT

This Court should hold that the Ninth Circuit erred in excluding the defendant's costs of complying with injunctive relief from the amount in controversy in class actions. The Ninth Circuit rightly recognized that "matter in controversy," 28 U.S.C. § 1332(a), generally must be assessed from "either viewpoint" and accordingly can include the defendant's costs of complying with injunctive relief. The diversity statute on its face does not distinguish between the interests of plaintiffs and defendants and thus is most naturally read to include the defendant's costs of meeting an injunction. Compliance costs often express most tangibly the "value of the object of the litigation," the test for determining the "amount in controversy" when a plaintiff seeks injunctive relief. *Hunt* v. *Washington State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977). Examining "either viewpoint" furthers the purpose of the amount-in-controversy requirement: to ensure that trivial controversies do not clog the federal courts. *See* 14B Charles A. Wright, *et al.*, Federal Practice and Procedure § 3703, at 124 (3d ed. 1998). Evaluating "either viewpoint" rather than just the plaintiff's avoids "blind[ing] federal courts to the realities of the magnitude of the controversy." *McCarty* v. *Amoco Pipeline Co.*, 595 F.2d 389, 394 (7th Cir. 1979) (internal quotations omitted).

Despite acknowledging that the "either viewpoint" rule applies in single or other "multiple plaintiff cases," the Ninth Circuit mistakenly concluded that the "either viewpoint" rule could not be applied in a class action consistently with the nonaggregation rule of *Snyder* v. *Harris*, 394 U.S. 332 (1969). Pet. App. 8a-9a, 12a. The diversity statute on its face makes no distinction between class actions and other actions. The rule forbidding the aggregation of separate and distinct claims provides no

basis for creating that distinction. As Judge Posner has explained, both the "either viewpoint" rule and *Snyder* are respected when "the cost to each defendant of an injunction running in favor of one plaintiff" exceeds the jurisdictional minimum. *In re Brand Name Prescription Drug Antitrust Litig.*, 123 F.3d 599, 610 (7th Cir. 1997). No impermissible aggregation occurs because in a class action "the defendant * * * is deemed to face multiple claims for injunctive relief, each of which must be separately evaluated." *Id.* Accordingly, when the same costs must be expended to provide relief to one plaintiff or many, those costs properly are attributed to *each* plaintiff's claim. Under the "either viewpoint" rule, therefore, jurisdiction is not based on the aggregation of separate and distinct claims, but rather on the "separate[ ] evaluat[ion]" of the sufficiency of individual claims, as *Snyder* directs. *Id.*

The Ninth Circuit's misplaced fear of an "inherent conflict" between the "either viewpoint" rule and *Snyder* led the court to contravene the very principle *Snyder* applied: that the federal rules cannot " 'extend or limit' " federal jurisdiction. 394 U.S. at 337 (quoting Fed. R. Civ. P. 82). Under the Ninth Circuit's rule, compliance costs can meet the amount-in-controversy requirement when plaintiffs seek injunctive relief individually or in other "multiple plaintiff cases" but not when their claims are joined in a Rule 23 class action. *Snyder*, however, recognizes that Rule 82 prohibits applying Rule 23 either " 'to extend *or limit*' " federal jurisdiction. 394 U.S. at 337 (quoting Fed. R. Civ. P. 82) (emphasis added). By refusing to apply the "either viewpoint" rule when claims are joined in a Rule 23 class action, and thereby divesting the courts of jurisdiction over claims that are jurisdictionally sufficient when brought in other ways, the Ninth Circuit achieved precisely the contraction of jurisdiction that Rule 82 and *Snyder* forbid.

The Ninth Circuit also incorrectly feared that applying the "either viewpoint" approach in class actions potentially federalizes "every case, however trivial, against a large company" in violation of Congress's presumed intent. Pet. App. 12a (internal quotations omitted). The "either viewpoint" rule does not move to federal court every such case because not every injunction defendants confront requires expending more than $75,000 whether one plaintiff or many prevail. Moreover, the "either viewpoint" rule is faithful to Congress's purpose of providing "access to a Federal forum" for "claims with substantial amounts at issue." S. Rep. No. 104-366, at 29-30 (1996), *reprinted in* 1996 U.S.C.C.A.N. 4202, 4209. When each claim exceeds the jurisdictional minimum because the same costs, in excess of that minimum, must be expended no matter how many plaintiffs sue, "substantial amounts" plainly are "at issue" for each "claim." *Id.* By contrast, the Ninth Circuit's exclusion of otherwise jurisdictionally sufficient claims from the federal courts merely because they are asserted in a Rule 23 class action disregards the federal courts' "virtually unflagging obligation * * * to exercise the jurisdiction" Congress conferred. *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817 (1976).

ARGUMENT

I. THE NINTH CIRCUIT CORRECTLY RECOGNIZED THAT THE PLAIN MEANING OF "MATTER IN CONTROVERSY" REQUIRES CONSIDERING THE VIEWPOINT OF EITHER PARTY INCLUDING THE DEFENDANT'S COSTS OF COMPLYING WITH INJUNCTIVE RELIEF

The Ninth Circuit agreed that determining "matter in controversy," 28 U.S.C. § 1332(a), generally requires examining "either viewpoint" and, therefore, that the amount in controversy can include "the potential cost to the defendant of complying with [an] injunction" Pet. App. 7a.[4] For several reasons, the Ninth Circuit's reading of the diversity statute to require consideration of "either viewpoint," *i.e.*, "the pecuniary result to either party which the judgment would directly produce," Pet. App. 7a, is correct. First, it is the natural reading of the

[4] The diversity statute, 28 U.S.C. § 1332(a), presently provides:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

statutory language and best serves the purposes of the amount-in-controversy requirement. Second, the alternative "plaintiff's viewpoint only" approach creates anomalies Congress could not have intended to foster, and complicates rather than simplifies the jurisdictional inquiry.

The federal diversity statute long has provided for federal jurisdiction only if "the matter in controversy" exceeds a particular "sum or value." 28 U.S.C. § 1332(a).[5] This language does not distinguish between the value to plaintiffs or defendants and thus is naturally read to include the costs to defendants of complying with injunctive relief—the "value" of the "matter" to that party. To construe "matter in controversy" to permit examining only the plaintiff's viewpoint and to compel ignoring the defendant's writes into the statutory text a limitation Congress did not make. The "well established" rule that "[i]n actions seeking declaratory or injunctive relief" the "amount in controversy is measured by the value of the object of the litigation," *Hunt* v. *Washington State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977), reinforces reading the statute to require examining "either viewpoint." When the "object of the litigation" is to compel the defendant's implementation of an injunction, the "value" can be measured from either the plaintiff's perspective (benefit received) or the defendant's perspective (cost incurred).

Reading "matter in controversy" to require examining "either viewpoint" also comports with "the purpose of a jurisdictional amount in controversy requirement—to keep trivial cases away from the federal court system." 14B Charles A. Wright, *et al.*, Federal Practice and Pro-

[5] *See generally* Richard H. Fallon, Jr., *et al.*, Hart and Wechsler's The Federal Courts and the Federal System 1542 (4th ed. 1996).

cedure § 3703, at 124 (3d ed. 1998). As Wright and Miller explain, this purpose "is satisfied" when "the case is worth a large sum of money to either party." *Id.*; *see also* Note, *Federal Jurisdictional Amount: Determination of the Matter in Controversy*, 73 Harv. L. Rev. 1369, 1372 (1960) ("[T]he effectuation of the statutory purpose seems to warrant attention to the most, rather than to the least, valuable interest in stake."). When the defendant's costs of implementing injunctive relief run into the millions, the controversy hardly can be called "trivial" regardless of how the plaintiff values the relief. By contrast, reading the statute to require examining only the plaintiff's interest can "blind federal courts to the realities of the magnitude of the controversy." *McCarty* v. *Amoco Pipeline Co.*, 595 F.2d 389, 394 (7th Cir. 1979) (internal quotations omitted).

The "either viewpoint" rule is also a proper reading of the statute because the "plaintiff's viewpoint only" rule creates anomalies Congress could not have intended. *See, e.g., Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U.S. 265, 278 (1995) (statutes should be read to avoid "anomalous" results). As one commentator observes, "in the many instances in which either party might have initiated the proceeding, it seems irrational to consider the plaintiff's interest exclusively, and such a practice may well provoke a race to the courts." Note, *supra*, 73 Harv. L. Rev. at 1373. Such "irrational" "races to the court" occur, for instance, when either party could bring an action seeking injunctive relief concerning the same property and only one party values the property over the jurisdictional amount. *Id.* at 1372-73. Under the "plaintiff's viewpoint only" rule, the existence of diversity jurisdiction in such a case would depend on the fortuity of which party happened to "win" the race to file a case

first.[6] The "either viewpoint" rule, by contrast, avoids such anomalous results.

Finally, some courts and commentators have suggested that a "plaintiff's viewpoint only" rule offers greater predictability and simplicity. *See, e.g., Kheel* v. *Port of New York Auth.*, 457 F.2d 46, 48-49 (2d Cir. 1972); Armistead M. Dobie, *Jurisdictional Amount in the United States District Court*, 38 Harv. L. Rev. 733, 736 (1925). But the rule has precisely the opposite consequence. A "plaintiff's viewpoint only" rule makes the court's task harder because determining the value a plaintiff places on an injunction can be "extremely difficult to assess." Note, *supra*, 73 Harv. L. Rev. at 1373-74; *see also, e.g., Committee of GI Rights v. Callaway*, 518 F.2d 466, 472-73 (D.C. Cir. 1975). The "either viewpoint" rule avoids this defect because "in some cases the presence of a readily ascertainable value to the defendant may eliminate the necessity of a highly speculative judgment as to the value to the plaintiff." Richard H. Fallon, Jr., *et al.*, Hart and Wechsler's The Federal Courts and the Federal System 1550 (4th ed. 1996); *accord* Note, *supra*, 73 Harv. L. Rev. at 1373-74.

Accordingly, the Court should hold that the "value of the object of the litigation" may be assessed from the

---

[6] The Harvard Law Review Note explains how, under the "plaintiff's viewpoint only" rule, the party with a jurisdictionally sufficient interest in the matter may be deprived of a federal forum simply because the party with a jurisdictionally *in*sufficient interest sues first in state court. If the defendant in the state court case initiates its own federal action, "the federal court might grant a stay by reference to the federal policy expressed in rule 13(a); or, if the defendant's claim is a compulsory counterclaim under the law of the state in which the plaintiff's action is brought, the federal court may be required to dismiss. Either of these dispositions effectively deprives the defendant of a federal adjudication." Note, *supra*, 73 Harv. L. Rev. at 1379 (footnote omitted).

perspective of either the plaintiff or defendant and can include the defendant's compliance costs..

II. THE NINTH CIRCUIT ERRED IN CREATING A CLASS ACTION EXCEPTION TO THE "EITHER VIEWPOINT" RULE

The Ninth Circuit agreed that, as demonstrated above, the diversity statute generally requires considering "either viewpoint" and, therefore, that the defendant's compliance costs generally can establish the amount in controversy. Pet. App. 7a-8a. The Ninth Circuit's understanding that the statute requires examining "either viewpoint" should have led the court to apply that same reading of the statute in a Rule 23 class action. The diversity statute makes no exception for class actions; and "the basic canon of statutory construction" is that the meaning of a particular statutory term must remain the same even when applied in different settings. *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U.S. 469, 479 (1992) (citations omitted); *see also, e.g.*, *Ratzlaf* v. *United States*, 510 U.S. 135, 143 (1994); *United States* v. *Nippon Paper Indus. Co.*, 109 F.3d 1, 4-6 (1st Cir. 1997).

The Ninth Circuit, however, ignored this "basic canon of statutory interpretation" and held that the "either viewpoint" rule does not apply when plaintiffs join their claims in a Rule 23 class action even though the "either viewpoint" rule properly applies in "single plaintiff" and other "multiple plaintiff cases." Pet. App. 8a-9a (internal quotations omitted). The Ninth Circuit believed this class action exception was compelled by an "inherent conflict" it detected between the "either viewpoint" rule and this Court's decision in *Snyder* v. *Harris*, 394 U.S. 332 (1969). *See* Pet. App. 8a-9a; *see also* Op. 11 ("[T]he Ninth Circuit * * * refused to extend application of the 'either viewpoint' rule to class actions because of the

nonaggregation principle established by this Court."). The Ninth Circuit also reasoned that applying the "either viewpoint" rule in a class action "is fundamentally violative of the principle underlying the jurisdictional amount requirement—to keep small diversity suits out of federal court." Pet. App. 8a, 12a. The Ninth Circuit's two reasons for departing from the "either viewpoint" rule are misconceived.

A. The Ninth Circuit's Exception to the "Either Viewpoint" Rule is Contrary to and Not Mandated by *Snyder* and Violates Federal Rule of Civil Procedure 82

As an initial matter, *Snyder* provides no basis for the Ninth Circuit's departure from the "either viewpoint" rule. To the contrary, the Ninth Circuit's creation of a class action exception to the "either viewpoint" rule flouts the very principle that *Snyder* applied: that the federal rules cannot " 'extend or limit' " federal jurisdiction. 394 U.S. at 337 (quoting Fed. R. Civ. P. 82).

1. First, applying the "either viewpoint" rule in a class action comports with *Snyder* because that rule does not threaten aggregation. In *Snyder*, this Court held that the amount-in-controversy requirement in a class action cannot be met by aggregating separate and distinct claims. 394 U.S. at 337-40. As Judge Posner has explained, the "either viewpoint" rule implements *Snyder* when "the cost to each defendant of an injunction running in favor of one plaintiff" exceeds the jurisdictional threshold. *In re Brand Name Prescription Drug Antitrust Litig.*, 123 F.3d 599, 610 (7th Cir. 1997). When the costs to a defendant of supplying the same relief to one plaintiff or many meets the amount-in-controversy requirement, *Snyder* is respected because *each* plaintiff's

claim, in such circumstances, is jurisdictionally sufficient. *Id.*[7]

The reason that the cost of an "injunction running in favor of one plaintiff," *In re Brand Name*, 123 F.3d at 610, determines the jurisdictional sufficiency of each class member's claim is that, as *Snyder* explains, a Rule 23 class action is simply a form of joinder. *See Snyder*, 394 U.S. at 337, 340. Joinder does not change the amount in controversy of each separate claim joined. *See* 7 Charles A. Wright, *et al.*, Federal Practice and Procedure ("Wright & Miller") § 1659, at 456-58 (3d ed. 2001). For example, if two plaintiffs sue separately to abate the same nuisance and the defendant's costs—should either prevail—exceed $75,000, then under the "either viewpoint" rule each claim would meet the amount-in-controversy requirement. The amount in controversy in each claim is not affected by the joinder of those claims in a single action, even though both plaintiffs seek to compel the defendant to engage in the same act. *See Snyder*, 394 U.S. at 336 (" 'When two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single suit, it is essential that the demand of each be the requisite jurisdictional amount * * *.' " (alteration in original) (quoting *Troy Bank* v. *G.A. Whitehead & Co.*, 222 U.S. 39, 40 (1911))); *see also, e.g., Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 154 (4th Cir. 1995) ("That both of [plaintiff's] claims are combined in one complaint does not by itself defeat the subject matter jurisdiction the court would have had over separate suits."); *Williams v. Conseco, Inc.*, 57 F. Supp.2d 1311, 1317 (S.D. Ala. 1999) ("[I]t is incoherent to suggest that each of the

[7] Because each plaintiff's claim is jurisdictionally sufficient under the "either viewpoint" rule, no issue is raised under *Zahn* v. *International Paper Co.*, 414 U.S. 291 (1973), even assuming *Zahn* remains good law, an issue this Court need not reach.

seven claims in the complaint could have been brought in federal court individually, but can not be brought under the same civil action via Fed. R. Civ. P. 20."). *See generally* 7 Wright & Miller, *supra*, § 1659, at 449 ("Subject-matter jurisdiction problems do not arise when each of the claims by or against * * * joined parties rests on an independent jurisdictional ground.").

The same is true when plaintiffs join separate and distinct claims for injunctive relief through a putative class action. "Whatever the form of relief sought, each plaintiff's claim must be held separate from each other plaintiff's claim from both the plaintiff's and the defendant's standpoint. The defendant in such a case is deemed to face multiple claims for injunctive relief, each of which must be separately evaluated." *In re Brand Name*, 123 F.3d at 610. Each class member's injunctive claim, in other words, is deemed to seek the same relief from the defendant. Just as when claims are joined pursuant to other rules, if the same costs must be incurred to supply the same injunctive relief to one plaintiff or many, then those costs are properly viewed as part of the amount in controversy of each plaintiff's claim. *Id.*

Because each claim is jurisdictionally sufficient when the costs "of an injunction running in favor of one plaintiff" exceed $75,000, the supposed "inherent conflict" the Ninth Circuit detected (Pet. App. 8a) between *Snyder* and applying the "either viewpoint" approach in class actions does not exist. *See In Re Brand Name*, 123 F.3d at 610. Jurisdiction is based not on an impermissible aggregation of the amount in controversy of separate claims, but rather the jurisdictional sufficiency of individual claims, as *Snyder* directs. *See Snyder*, 394 U.S. at 337-38.

2. Second, *Snyder* actually refutes the Ninth Circuit's class action exception because it violates the very prin-

ciple *Snyder* applied: that the federal rules cannot expand or contract federal jurisdiction. Rule 82 provides that the Federal Rules of Civil Procedure " 'shall not be construed to extend or limit the jurisdiction of the United States district courts.' " *Snyder*, 394 U.S. at 337 (quoting Fed. R. Civ. P. 82). In *Snyder*, this Court applied Rule 82 to decline to except Rule 23 class actions from the rule forbidding aggregation of separate and distinct claims. *Id.* at 338. This Court reasoned that, because the nonaggregation rule is derived from the amount-in-controversy statute, a Rule 23 exception would impermissibly alter the jurisdiction of the federal courts. *Id.* at 337-38.

Yet, just as *Snyder* recognizes that the federal rules cannot *extend* federal jurisdiction, so too *Snyder* recognizes that the federal rules cannot *limit* that jurisdiction. As *Snyder* states, to apply the federal rules "to effect a change in the definition of 'matter in controversy' would clearly conflict with the command of Rule 82 that 'these rules shall not be construed to extend *or limit* the jurisdiction of the United States district courts.' " *Snyder*, 394 U.S. at 337 (quoting Fed. R. Civ. P. 82) (emphasis added). Indeed, *Snyder* observes, under Rule 82 any change in the interpretation of "matter in controversy" that applies "in class action cases under Rule 23 would inescapably have to be applied as well to the liberal joinder provisions of Rule 20 and to the joinder of claims provisions of Rule 18." *Id.* at 340.

The Ninth Circuit's class action exception to the "either viewpoint" rule achieves precisely the contraction of jurisdiction *Snyder* forbids. Even if each claim asserted by each plaintiff independently meets the amount-in-controversy requirement, under the Ninth Circuit's rule the federal courts are without power to adjudicate those claims when they are joined in a Rule 23 class action. This refusal to apply the "either viewpoint"

rule in a class action is a "change in the definition of 'matter in controversy' " based on application of a federal rule and, therefore, improperly " 'limit[s]' " the jurisdiction of the federal courts. *Snyder*, 394 U.S. at 337 (quoting Fed. R. Civ. P. 82). Whether separate and distinct claims are asserted by each plaintiff independently, joined under Rules 18 or 20, or joined pursuant to Rule 23, Rule 82 requires applying the same definition of matter in controversy. *See Snyder*, 394 U.S. at 340.[8]

B. Application of the "Either Viewpoint" Rule Comports with Congress's Intent and Does Not Threaten to Federalize Every Class Action Alleging Violations of State Law

The Ninth Circuit's contraction of federal jurisdiction not only violates Rule 82, but also is based on a false premise. The court feared that applying the "either viewpoint" rule in class actions seeking injunctive relief would permit "every case, however trivial, against a large company" to be brought in federal court, Pet. App. 12a (internal quotations omitted), in violation of Congress's presumed intent. The Ninth Circuit's prediction is wrong; and the court's exclusion of compliance costs from the calculation of the jurisdictional amount in class actions subverts rather than furthers Congress's design.

---

[8] Fidelity to Rule 82 also defeats respondents' suggestion (Op. 14) that their claims for injunctive relief should be disregarded for amount-in-controversy purposes in a class action because injunctive relief is not "the primary object of this litigation." The plaintiff's motive for seeking injunctive relief does not affect the costs to the defendant of complying with such relief if ordered; and, as explained above in Point I, the amount in controversy is properly determined from either viewpoint.

1. Contrary to the Ninth Circuit's fear, proper application of the "either viewpoint" rule does not move every claim against a major company based on state law to federal court. Plaintiffs do not invariably bring class actions or seek injunctive relief. Moreover, there are many claims for injunctive relief that do not threaten to impose costs on defendants that invariably exceed the jurisdictional threshold. These include, for instance, actions in which plaintiffs seek specific performance of separate and distinct contracts in which the amount due under each is below the jurisdictional minimum. The costs of compliance for a single plaintiff in such a case is simply the value of a particular contract and the amount in controversy in such a case would not be met. *See, e.g.*, *Griffith* v. *Sealtite Corp.*, 903 F.2d 495, 497-98 (7th Cir. 1990); *Glover* v. *Johns-Manville Corp.*, 662 F.2d 225, 231-32 (4th Cir. 1981); *Eagle Star Ins. Co.* v. *Maltes*, 313 F.2d 778, 779-81 (5th Cir. 1963). Another example of a type of case that does not invariably meet the amount-in-controversy threshold is a class action seeking to compel a defendant simply to ship to each plaintiff a cheap replacement part already sitting on a shelf. If the costs of providing the part to one plaintiff do not exceed $75,000, compliance costs alone cannot meet the jurisdictional minimum if the case involves separate and distinct claims, even if the defendant's total costs exceed that amount. Compliance with a cease and desist order, too, will not always cost $75,000 to provide relief to a single plaintiff.

By contrast, in other cases the costs of complying with injunctive relief may be substantial whether one or more plaintiffs prevail. In these cases, the costs that must be incurred to provide relief to *any* plaintiff—the "fixed costs"—are part of the value of each plaintiff's claim because each claim, in effect, is for that relief. For instance, when a defendant must spend in excess of

$75,000 to re-label a product, *see, e.g.*, *Kanter* v. *Warner-Lambert Co.*, 265 F.3d 853 (9th Cir. 2001), those costs are properly attributable to each plaintiff's claim and the amount in controversy would be met. So too, injunctive relief seeking to compel a defendant to "fund[ ] * * * studies of the long-term effects" of a particular drug and to "provid[e] for the creation, maintenance, and operation of a registry" making available information relating to that drug,[9] plainly requires expending sums well in excess of $75,000 whether there is one plaintiff or many and whether claims are asserted in individual suits or in a multiple-plaintiff action. Other examples of injunctive relief that can involve high fixed costs properly attributable to each plaintiff's claim include requiring a defendant to develop a medical monitoring facility and program, compelling a company to redesign its products, *see, e.g.*, *In re Microsoft Corp. Antitrust Litig.*, 127 F. Supp.2d 702, 719 (D. Md. 2001), or directing a company to redesign and manufacture new parts to repair an assertedly defective device.[10]

2. The assertion of federal jurisdiction over these class actions—controversies in which the cost of pro-

---

[9] *Dawalt* v. *Purdue Pharma, L.P.*, No. 01-c1-01463 (Ky. Cir. Ct., Compl. filed Nov. 26, 2001) (Complaint ¶ 139).

[10] There may be cases in which a particular remedy is unavailable to a single plaintiff. But when "*only* the class as a whole is entitled to the relief requested," *Loizon v. SMH Societe Suisse de Microelectronics*, 950 F. Supp. 250, 252-53 (N.D. Ill. 1996) (emphasis added) (internal quotations omitted), plaintiffs surely have "unite[d] to enforce a single title or right in which they have a common and undivided interest." *Snyder*, 394 U.S. at 335. Indeed, circumstances in which the recovery of one "depend[s] upon the recovery of others" describes one classic category of "common and undivided interest" cases. *Shields* v. *Thomas*, 58 U.S. 3, 5 (1854). In such circumstances, the amount in controversy may be based on the defendant's total detriment consistent with *Snyder*'s nonaggregation rule. *See Snyder*, 394 U.S. at 335.

viding relief to even a single plaintiff exceeds $75,000 and therefore each plaintiff's claim is jurisdictionally sufficient—is faithful to the balance Congress struck in maintaining diversity jurisdiction for "claims with substantial amounts at issue," S. Rep. No. 104-366, at 29-30 (1996), *reprinted in* 1996 U.S.C.C.A.N. 4202, 4209, while periodically adjusting the jurisdictional threshold.[11] Cases in which plaintiffs seek to compel a defendant to redesign its internationally-marketed products, relabel its FDA-approved products, or fundamentally alter the conduct of its business, hardly can be characterized as "small diversity suits," Pet. App. 12a, or exclusively "local controversies," *Snyder*, 394 U.S. at 340. The relief sought in such disputes often implicates the defendant's operations well beyond the State whose laws the plaintiffs invoke and can have profound implications for the nation's welfare and public policy. To provide the option of adjudicating such disputes in federal court when each class claim crosses the jurisdictional threshold does not "fritter away" those courts' resources in "the trial of petty controversies." S. Rep. No. 58-1830, at 4 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3099, 3101, and thus preserves the core value the amount-in-controversy requirement serves. By contrast, the Ninth Circuit's exclusion of jurisdictionally sufficient claims from the federal courts in the name of excising "small diversity suits" (Pet. App. 12a) abdicates the federal courts' "virtually unflagging obligation * * * to exercise the jurisdiction" Congress conferred.

---

[11] *See, e.g.*, S. Rep. No. 104-366, at 29-30 (1996), *reprinted in* 1996 U.S.C.C.A.N. 4202, 4209 (Report accompanying bill increasing amount-in-controversy requirement to $75,000); H.R. Rep. No. 100-899, at 44-45 (1988), *reprinted in* 1988 U.S.C.C.A.N. 5982, 6004-06 (same with respect to increase to $50,000); S. Rep. No. 58-1830, at 4 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3099, 3101 (same with respect to increase to $10,000).

Colorado River Water Conservation Dist. v. *United States*, 424 U.S. 800, 817 (1976).

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the Ninth Circuit or vacate that judgment and remand the matter for application of the correct legal standard for assessing the amount in controversy.

Respectfully submitted,

DAVID KLINGSBERG
Counsel of Record
THOMAS A. SMART
MARK S. POPOFSKY
RICHARD A. DE SEVO
KAYE SCHOLER LLP
425 Park Avenue
New York, New York 10022
(212) 836-8000

Of Counsel:

MARJORIE E. POWELL
PHARMACEUTICAL RESEARCH
AND MANUFACTURERS OF AMERICA
1100 Fifteenth Street, NW
Washington, DC 20005

Dated: May 6, 2002